THE

BENCH AND BAR

OF

TEXAS.

BY

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'Tis not in mortals to command success, but
We'll do more, Sempronius, we'll deserve it.

—ADDISON'S CATO.

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JOHN HANCOCK.

The subject of this biography was born in Jackson County, Alabama, on the 24th day of October, 1824, whither his father, John Allen Hancock, a native of Virginia and a planter, had emigrated in 1819. Having devoted several years of his boyhood to the duties of the farm and acquired the habits of industry and economy inculcated by that most moral of all early training, he was afforded excellent educational advantages in the University of East Tennessee at Knoxville, in which he pursued a thorough course of studies and vigorously availed himself of his opportunities.

In 1843, he began the study of law under the supervision of Judge William Taul, an eminent lawyer of Winchester, and in 1846 was admitted to the bar in his native county. But possessed of an enterprise, an ambition alert for grandest possibilities, he determined to seek his fortune in Texas, and, having spent several months in prospecting for a suitable locality, he settled, in 1847, at Austin, where he formed a copartnership with Hon. A. J. Hamilton, and which has since been his constant residence. His close application and fidelity gained him friends and patronage. He soon acquired distinction and a large practice at the bar, and in 1851, when but twenty-six years of age, was elected judge of the Second Judicial District. His career upon the bench was characterized by honor and efficiency. His searching investigations gave soundness to his decisions. His promptness and dispatch, attended by a dignity and gravity of manner rarely found in one of his age, commanded confidence and respect, and he had the reputation of being a just, impartial, and able judge.

In 1855 he resigned the judgeship and formed a copart-

nership with Hon. Charles S. West, which continued until the latter was elected to the bench of the Supreme Court in 1883, and he then became associated in practice with his present partner, General N. G. Shelley. In conjunction with these gentlemen respectively he has been engaged while not on the bench or in Congress in nearly all the important land cases that have come before the courts in his section of the State. He is thoroughly familiar with the land laws of Texas, with the origin and nature of the various tenures by which the lands of the State are held, and his practice in these cases, especially, has been attended with remarkable success. While he is a man of fine natural abilities and general attainments, his success as a lawyer is largely due to a steady and almost unremitting attention to the business entrusted to him. It has been his rule to spend every business hour in either his office or the court-room, and it is said of him that during the thirty-eight years of his residence in Austin he has not spent that many hours on the streets undevoted to the requirements of his business, and that during all that time he has never failed to keep a professional, official or political engagement.

Some of the most important cases argued by Judge Hancock are Carter *v.* Carter, which is a leading case as to the admissibility of parol testimony to show that "a deed or bill of sale absolute on its face is a mortgage," and Hancock *v.* McKinney, 7 Texas, 384, which was a highly important case at the time, as it determined the consideration to be given by the Texas courts to conditional titles to land emanating from the preceding government, when the conditions had not been performed by the grantee, and to other questions relating to Mexican titles. The court rejected his views, but the Constitution of 1875 adopted, in its thirteenth article, the policy for which he contended. These cases were argued by him before his election to the bench.

While judge of the Second Judicial District he introduced several important rules, which greatly promoted the facility of the court in the dispatch of business, and which have been followed by his successors. One of which was

that practicing lawyers should not absent themselves from the court-room during the sitting of the court without notifying the sheriff of the place at which they could be found. Upon which a reasonable time would be given for sending for them; but no lawyer would be called as had been the custom and the cause of frequent and prolonged delays. The other rule was to order parties convicted and fined into the custody of the sheriff and to stand committed until the fine was paid. Previous to this parties convicted of misdemeanors, especially gamblers, would walk out of court in defiance of the law and regardless of the penalty imposed by the judge. In addition to this he informed the sheriff that his custody meant confinement in the county jail, and the beneficial effect of the rule was soon obvious upon all classes of society.

One of the most important and interesting questions argued by Judge Hancock after his return to the bar was the *habeas corpus* case of Peebles and others before the Supreme Court of Texas, in 1864. The history of this case is interesting as it presents a view of the conflict of law and public sentiment which often pervaded whole communities in those unsettled times. It is as follows: —

In 1863, J. D. Baldwin, a lawyer of Houston, wrote and published his views of secession in a pamphlet entitled, "Common Sense;" in which he arraigned its origin, its purpose and the manner in which it was accomplished, together with the manner in which the war was being conducted, and its ultimate consequences.

This work was printed by a German, named Zinke, with whom another German named Hilderbrand was supposed to be associated in the matter, and was covertly circulated. The work produced feelings of indignation and bitterness against the author and all who were supposed to be accomplices in its production and circulation. Baldwin was upon terms of social intimacy with Dr. R. R. Peebles, a wealthy planter on the Brazos River, and, before that time, a man highly respected in his community, though a staunch and avowed Union man, and frequently visited his residence. This caused the complicity of Peebles in the pub-

lication to be suspicioned, and the result of public sentiment was that a military order was issued for the arrest of Baldwin, Peebles, Zinke and Hilderbrand. The prisoners, after having been confined at respective places, were taken to San Antonio, where the public feeling was so exasperated against them that threats were made against their lives, and they would no doubt have suffered the utmost violence had it not been for the prompt and stern protection afforded them by Capt. Thomas E. Sneed, now a prominent lawyer of Austin, who was in command of the company detailed to guard them. This sentiment against them ran so high that the lawyers of San Antonio, Houston and other places, either through condemnation, or fear of public disapproval, declined to take any steps in behalf of the prisoners, notwithstanding that their friends, especially the family of Peebles, had made every effort and offer of inducement to procure counsel for them.

Under these circumstances Mrs. Peebles repaired to Austin and personally sought the services of Judge Hancock in an effort to save, as she supposed, the life of her husband, and without fee or reward he undertook their cause, and obtained a writ of *habeas corpus* from the Supreme Court, upon which the prisoners were tried and liberated. This result, effected in the midst of popular excitement, he achieved by a calm and deliberate discussion of the principles of constitutional law, the inalienable rights of the citizen, and the obligations of those clothed with judicial authority to conform their adjudications to the written law of the land and to the dictates of human rights. He boldly denounced the assumption of arbitrary power by the military authorities, and his victory was a vindication of the inalienable rights of an American citizen.

In politics, Judge Hancock has always been a Democrat of the Jacksonian school; he was opposed to the doctrines of nullification and secession, and in 1860 was elected to the Legislature on the Union ticket; but in 1861, declined to take the required oath to the Confederate government, and was deprived of his seat. During the war he maintained a neutral attitude, and divided his attention between the

practice of his profession and the supervision of his stock farm until he was threatened in 1864 with compulsory military service in a cause, the policy and character of which were against his convictions. He then repaired to Mexico, and having resided several months in that country, he made his way to the United States and remained at the North until the close of the war.

At the termination of hostilities, Judge Hancock returned to Texas and devoted his efforts to the amelioration of the condition of the people, and had his advice at that period been heeded, and the position he assumed been adopted, it would no doubt have greatly paralyzed the revengeful designs of the dominant party at the North, which were promoted by the reluctance of the Southern people to accept the full results of the issue. He was a member of the State Convention of 1866, and used his best efforts in the interest of conciliation and the immediate restoration of harmonious relations between the State and the Federal government as the only means of restoring the peace and prosperity of the people. Time, the great monitor of events, has vindicated his sagacity and established the correctness of his views, and he is considered a wise connselor both as a lawyer and statesman.

In 1870 he was tendered the nomination for Congress by a convention held at Seguin, but he declined in obedience to the demands of a large law practice, which he was not disposed to exchange for political honors; but in 1871 he yielded to the popular wishes and accepted the nomination as the Democratic candidate. He was easily elected, and served by re-election until 1877, when, having been defeated for renomination, he resumed the practice of law. His services in Congress had been faithful and eminent. His industrious habits, his business capacity, his practical genius, his kindness of heart, suavity of manners, and polished urbanity, crowned with conspicuous talents, gave him great influence, and he pursued with a steady purpose the accomplishment of that which he conceived to be the best interest of his constituency, his State and the country. So marked had been his efficiency, and so able and beneficent

his career, that his services were again demanded, and in 1882, he was elected to the Forty-eighth Congress. In 1884 he declined re-election, and after participating in the proceedings preliminary to the glorious inauguration of President Cleveland, he once more returned to the practice of his profession at Austin where he is now engaged in a large business.

The brilliant career of Judge Hancock is due to his force of character and the qualities already mentioned. He possesses no superior natural gifts as an orator and has never cultivated the artificial embellishments of speech or the mere flowers of oratory. He disdains all its "flower decked plats and blooming parterres;" but, with his purpose well defined and his object constantly fixed in his view, his acute perception and cultivated judgment marshal every available point in the line of his argument, while a strong, powerful logic presents the merits of his case to the comprehension of common sense, and seizes upon conviction with the grasp of reason.

"The fluency of speech in many men and most women," says Jonathan Swift, "is owing to a scarcity of matter, and a scarcity of words; for whoever is master of language, and hath a mind full of ideas, will be apt in speaking to hesitate upon the choice of both; whereas fluent speakers often have but one set of ideas and one set of words to clothe them in; and those are always ready at the mouth; so people come faster out of the church when it is almost empty, than when there is a crowd at the door."

It is true that there are prominent exceptions to this rule as in the instances of Daniel Webster, Henry Clay and Sergeant S. Prentiss; but these exceptions have their origin in pre-eminent genius and, therefore, only affirm the aphorism.

Judge Hancock is a man of great energy and integrity of purpose, and views with impatience and intolerance every effort of evasion or undue advantage, and has no complacency with mere trifling with matters of importance. His last debate in the House of Representatives was upon the Fortification Bill, reported from his committee on the

1st of March, 1885. For some reason the calibers of the guns used in the United States navy were assized by odd numbers while those used in the army are varied by even numbers. Judge Hancock contended that the calibers of all should be uniform, so that the same ammunition could be used both on sea and on land, and be interchangeable in the event of a deficiency in either branch of the service, and so that army officers could understand the use of navy guns and naval officers the use of army ordnance without special training.

Some of the members during the debate on this bill in the committee of the whole availed themselves of their five minutes' time to discuss the question of silver coinage. To which Judge Hancock sternly objected, saying that it was not proposed by the bill to fabricate cannon and build fortifications out of silver.

In his speech on "counting the electoral votes," delivered in the House of Representives on the 25th of January, 1877, he said: —

"Nothing is more hateful than a treacherous duplicity and a pretense of fairness merely delusory and intended to defraud. Everything which seems to be fair in this act of legislation is merely specious, insincere, and destructive.

"The board is to be at first composed of persons from all political parties, but it is not provided that it shall continue so. A vacancy occurring should be filled with one from the same political party as the last tenant, but it is not promised that it shall be, and those who are to elect can not be made to elect at all. A person interested as a candidate is to be allowed a hearing, but there is no promise that the hearing shall be full or fair. The returning officers are to hear testimony, but it is not provided that they shall do this publicly, or that there may be cross-examination or opportunity for rebuttal, or previous notice to any one in all the world. Their conclusions are to be considered *prima facie* correct, and may be gone behind in a formal proceeding to contest, but their findings as to the material facts are final and it can not be shown that they ought not to have been convinced. To sum all up in a word, they can truly

plead they had ample warrant in the letter of the law for doing all they have done and for abundant sharp practice besides. There is no limit to the amount of villainy which the law makes possible and permits.

"It has been said to be 'the common method of all governments now received in the world to allow almost everything that tends to the corruption of manners, and then to restrain those corruptions; a work,' it is added, 'far beyond the power of the longest experience and greatest prudence.' The act in question is a resort to one of those pernicious practices that tend to destroy public liberty. It proposes to legalize the ill-designs of inveterate knaves, never boldly attempted to be carried into effect by legislation in a republic until it is declining to its fall. It was most truly said by Fletcher that 'a government is not only tyranny when tyrannically exercised, but also when there is no sufficient caution in the constitution that it may not be exercised tyrannically.' 'All governments,' he said, 'are tyrannical which have not in their construction a sufficient security against arbitrary power.'

"This act is tyrannical because it intrusts arbitrary power to five men or a less number, to be exercised without power of control or security against abuse in any quarter. It puts it in their power arbitrarily to annul the votes of whole parishes and cities, and so makes the right of suffrage of all the citizens depend upon their favor, their caprice, their interest, their irresponsible will. It is, therefore, not only violative of the rights of men; it not only makes the elective franchise and title to office, both of which are property, exist or disappear at the pleasure of four or five men having perpetual succession, but it makes the government of a State a tyranny, and not republican even in form."

Perhaps the most important and effective speech made by Judge Hancock in Congress was that on Indian affairs delivered in the Forty-third Congress. By this speech he was enabled to change the policy of the government towards the Indians so far as to prohibit the issuing of rations to them for more than seven days at a time, and to cause the order that they would not be permitted to leave the reservations

unless accompanied by an officer of the United States. These regulations have prevented any raid from being made into Texas since that time, except from Mexico.

In 1876 he was assailed by Col. D. C. Giddings, the Democratic nominee for Congress, for having failed as a Southern Union Democrat to keep his promise to defend the Southern people against the violent attacks which were then being made by Radical partisans in Congress; and it was charged by Col. George Flournoy, an orator of Galveston, that he had been elected to Congress by the Texan Democracy for the sole purpose of mollifying the asperity of the North towards the people of the South, and that Galveston Democrats rejected him because he did not defend them when Blaine, Morton and others were heaping calumny and slander and falsehood upon them on the floor of Congress.

To these charges he published an elaborate reply and refutation which he concluded with the following observations: —

"Why should I have been brought into this Congressional contest? My merits or demerits could neither add to nor take from those of Col. Jones or Col. Giddings, and whether I may have at all times done the wisest and best thing, or sometimes erred in judgment, as I often do, being but a frail, fallible mortal, almost every day looking back to find some error of yesterday I would correct, could in no way aid the people to a correct judgment in deciding between these aspirants. It was known I had been invited and gone to a remote part of the State, and taken no part in the contest, wished to take none further than vote for Col. Giddings, as I did, he being the nominee of the convention before which friends had placed my name, which in honor bound me, as well as duty to my friends, to abide by the action of the convention; they both claimed to be, and, I doubt not, have ever been, Democrats, and it was the people's right to choose between them. The action of the convention was only persuasive, not binding on them. On principle, as also by usage, they are, and should be, left free to vote as, in their judgment, will best subserve the

public welfare. For me to have sought to inflence their selection, as between two Democrats, as to which of them should be my successor, would have been not free from criticism, besides both professed to be my warm personal and political friends. My friends and staunch supporters brought Colonel Giddings's name before the convention, supported and secured his nomination. The same men canvassed for him, and elected him, and he, till he reached Galveston, wherever he spoke of me, employed terms of eulogy and approval; but of those who conspired for my defeat, at all hazards, here he found himself among the chief priests, and then Judas said, 'Hail Master, and kissed him.' It seems, too, it had become popular with some of the would-be leaders in Galveston to abuse and say spiteful things of me. I have not been able to do a tithe of what I wished to advance the growth and prosperity of that city. The little I have done ought not to excite the enmity of that class of persons who are ever ready to become the enemy of those who render them favors and benefits, to show how independent they are. I remember, too, that among the most gloomy and foreboding features of our political history are those instances where artful, designing and ambitious demagogues conspired to move the public mind, by falsehood and misrepresentation, to passion and prejudice, till the people displaced, for a time, from their confidence, men deserving better of them than I have the ability to do. I have made no murmur of complaint and feel I ought to have been allowed to remain silent. If my defeat does not reflect the wish of the people of this district, in their own good time they will rebuke those who refused to reflect their views. I have not thrust myself upon the people, at any time, and have only held office and served them when they have manifested a desire to have me do so; but it seems determined, the people shall not manifest such wish if any manner of falsehood and misrepresentations can prevent.

"In Congress I have pursued that course, and observed, in my intercourse with others, that demeanor and deportment towards them which I believed best, to enable me to accom-

plish results deemed beneficial to those I had the honor to represent and all the people of Texas. I have not been able to accomplish all, or near as much as I could have wished, for their benefit. How far I have succeeded is shown by the record and known of many men. I have not paraded my humble achievements for the applause or the gratitude of the people, or for comparison with results effected by my colleagues; each has ever done, most certainly, all in his power; far be it from me to seek to deprive any of the merit of his conceptions, labor or influence. They are all able, efficient and faithful, and deserve, as they have received, well of their constituents.

"Had the people who had honored me by electing me their representative, or of Texas or the South, been traduced or reviled, a failure to have properly repelled the slander or defended them, would have been a proper subject of criticism; but assaults made upon individuals should be considered and treated responsive to the purpose aimed to be accomplished by the assailant and the wrong or injustice to the individual assailed with reference to the facts and conditions of the subject-matter about the conduct of which the assault is made. The purpose was a common expedient resorted to by the demagogues, both North and South, as everywhere else, when occasion requires, to influence the passions and rekindle the prejudices of the people by revitalizing dead and past issues, as questions pending before and to be decided on by them in a pending political contest. The alleged cruel treatment and great suffering of prisoners, in consequence of the brutal and tyrannical conduct of the war under and by authority of Mr. Jefferson Davis, were the subjects aptly selected to be presented to, discussed before, and passed upon by the people in electing a President of the United States. Questions in no way connected with the different theories and measures of governmental policy maintained by the contending parties, or that could, in any degree, aid the people to decide on the respective merits of opposing candidates; but well calculated to effect the object desired of diverting the public mind from the real issues involved in the election, by reviving the preju-

dices and passions of the people and inducing them to again pass on the merits of secession and the war, rather than on the inefficiency, malpractices and corruptions of the administration and party in power. No doubt, had it been permitted, the party bringing forward these false and dead issues of secession and the war, would have kept up their discussion through the session of Congress and till the termination of the presidential contest. Considered in a political aspect, to have protracted discussion, the Democratic party could have gained nothing and might have lost much. Regarded in that light, enough had been said, and from the most effective quarter, when Mr. Cox and Mr. Kelley had spoken. How far Mr. Davis might be affected by the assault on him was proper to be determined by his personal friends and past political associates. They deemed it a duty to defend and vindicate his name, though his whole course had already become history, not to be changed by what politicians might think or say of him for partisan purposes. So far as secession and those engaged in the effort to accomplish it, or still keeping it up may have been brought in by implication, though I do not conceive that either was, even by implication, reached by the assault on Mr. Davis, I could not have been a proper advocate for either.

"It is well known I opposed secession. I did so upon my convictions that it was wrong — very wrong — would bring war, desolation and disaster upon the country, ruin and death to thousands, whatever the result, and success would eventuate in the overthrow of republican government and the establishment of a monarchy. Others favored the measure upon their convictions, equally sincere, proven by the highest testimony man could offer, the yielding up of life itself, that none of my apprehended evils would follow and that great ultimate good would be accomplished. A great problem in the science of human government was involved, upon which the wisest men might honestly differ. But on that account, if good and truly patriotic, they would retain no personal enmities, when the issue should be settled

and passed into history. When the war was over, I knew no feeling of enmity or unkindness towards any one on account of difference on the question of secession. My law partner, for over a score of years, and I returned to our old office near the same time, he from the Southern army, in which he had served as a soldier, and I from a section of country held by the Union army. We resumed our places at our accustomed desks and took up business where we left off without, I am sure, a recognizable change in our mutual feelings of friendship, respect and confidence, as they were before secession began. I so felt and acted towards all who disagreed with me on that momentous question. That feeling and conduct have been reciprocated by many zealous secessionists, who faithfully performed every duty devolved on them by the attempted revolution. But when the contest was ended, they returned to their allegiance and duty as became honest men and patriots, and I am proud to be able to claim many such among my most trusted friends and supporters. I have ever been as ready to trust and to serve them as if we had never differed. It has been my pleasure, as I believe it my duty, to do all in my power to alleviate the people in their distress, and to ameliorate their condition as left by the war, to shield and defend them from what I deemed an unwisely rigorous policy, to rehabilitate them with all the political rights, that by prudent and vigilant use of them they might secure to themselves good government and renewed prosperity. No one can truthfully say I have not freely used every influence my position and humble ability gave me for the accomplishment of these results. But I was as pronouncedly and unqualifiedly opposed to secession as any man could have been in favor of it. No reasonable man would expect me to become its advocate or defender in Congress, and the defense of the leaders, arraigned for the mode of conducting the war, manifestly might be appropriately left to members who co-operated with them in carrying it on — were better prepared by greater familiarity with the facts, and interested in vindicating the conduct of their leaders — than be

required of members who from the first disapproved secession, and would not likely have the same familiarity with the transactions complained of.

"Though I have been as well abused and as wantonly misrepresented, and from as malicious and selfish motives, as any man in the State, I have not before this deemed it necessary to make any defense. But, on this occasion, the attacks are so extraordinarily monstrous in their moral deformities when their accuracy is tested by the public records of the country, that I felt it due as well to the people as to myself that they should know from these authentic sources, the facts. For in my retirement, now soon to occur, from all political position, I have the satisfaction of knowing that I never have been afraid to tell the people the truth, and then abide their ultimate judgment."

In social life, Judge Hancock is a man of exceedingly popular traits of character. He is devoted and constant in his personal attachments, and has many warm friends throughout the State who would sustain him for any position of public trust, and would have been glad to have seen him occupy a place in Mr. Cleveland's Cabinet, as one who would have possessed the confidence of the North and would have been true to the interest of the South. But in his retirement from long public service he no doubt enjoys the sweetness of that repose which follows the conscientious performance of honestly conceived duty.

He was married in November, 1855, to Miss Sue E. Richardson, who is a native Texan, and the granddaughter of Hon. Asa. Brigham, first secretary of the treasury of the Texas Republic. This admirable lady has woven into his busy life every charm of domestic felicity.